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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Transfer Application No.486 of 1986

Bamdeo Singh and others Plaintiffs-Applicants

Versus

Union of India & another Defendants-Opp-Parties.

Hon'ble S. Zahoor Hasan, V.C.

Hon'ble Ajay Johri, A.M.

(Delivered by Hon'ble Ajay Johri)

1. Suit No. 50 of 1984, Bamdeo Singh and two others v. Union of India and another, has been received on transfer from the court of Munsif, Hawali, Varanasi.

2. According to plaintiffs, they were appointed in class IV category and were called for a suitability test for the post of Coding Clerk and after having been found suitable they were promoted and posted as Coding Clerks on 23.1.1977, 1.1.1977 and 19.4.1980 respectively.

They claim that they were promoted regularly as ad-hoc promotions could not be made in vacancies expected to last over three months vide Railway Board letter no.E(NG)73/PMI/222 of 23.2.1974. They have also earned their regular increments. They have ~~thus~~ ^{by due time} earned a prescriptive right for being confirmed to the post of Coding Clerk as they have worked for more than two years. They also seek protection of the directive on protection against reversion on more than 18 months continuous officiating service. The defendants have threatened to deprive them of the post of Coding Clerk

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on 19.1.1984. They have, therefore, prayed that a permanent prohibitory injunction be issued restraining the defendants from disturbing them from the post of Coding Clerk and to issue a decree declaring that they are entitled for confirmation to the post of Coding Clerk on completion of two years continuous service.

3. That defendants' case is that plaintiff no.2, Babu Lal, is a staff peon not belonging to transp. group and hence has no claim to the post. He did not apply for selection and is also not eligible. Plaintiffs nos. 1 and 3 have avenue of promotion as S/Man, L/Man, etc. They have no direct avenue to the post of Trains Clerk which is a selection post. The plaintiffs were not selected or empanelled and have no right for the posts. ^{3/4 been} They have ~~been~~ put to work as Coding Clerks purely on adhoc basis. Adhoc arrangements can last more than three months. They have not been posted as a regular measure. For selection posts suitability test are not done. Earning increments does not give them any right for confirmation or to hold the post. The 18 months officiating rule is not applicable to them. They have not been threatened. The plaintiffs have not been selected or empanelled for the post of Trains Clerk/ Coding Clerk nor have they avenue of promotion to these posts.

4. We have heard the learned counsel for both the parties and have also perused the case file. The main contentions of the learned counsel for the plaintiffs ^{3/4 are} were that the plaintiffs have been working as Coding Clerks for a long time after having passed the test, they were working against the promotional

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quota, adhoc promotions are governed by Board's letter of 23.2.1974 (paper 9 of documents) and they are entitled to be confirmed in terms of Board's letter of 23.10.1973 (paper 11 of documents). They have also crossed the Efficiency Bar and are hence competent to hold the post. According to him when the plaintiffs claimed their rights they were told that they have no avenue of promotion to this post. Since no papers have been filed in rebuttal in regard to their having been selected the balance of convenience should be in favour of the plaintiffs. While the learned counsel for defendants has submitted that no selection has been held. If at all only a written test was held and they were officiating on adhoc basis and have, therefore, no right to continue.

5. The Service Books of the plaintiffs are placed in the suit file. The principal related entries in their cases are :-

i) Bamdeo Singh :- Worked as peon with Dy. Dir. Rail movement, transferred to D.O.S.(T), Mughalsarai on 20.6.1969, confirmed as Lampman put to work as officiating Trains Clerk on stop-gap measure w.e.f. 23.1.1977, working as such on 1.1.1985.

ii) Bharat Kawat :- Worked as substitute peon in D.O.S.(T) Office. Put to work as Trains Clerk on stop gap measure on 10.4.80, working as such on 1.4.1985.

iii) Baboo Lal :- Worked as Peon in D.O.S.(T) Office, put to work as Trains Clerk w.e.f. 2.1.1977 on temporary local stop gap measure, working as such on 1.1.1985.

Thus all the three plaintiffs had been working as peons in Operating Branch under D.O.S.(T) and they were put to work on adhoc basis as Trains/Coding Clerks till replaced by selected persons.

6. The learned counsel for defendants has challenged the authority of the letter of 9.2.1978 regarding staff having qualified at the Written Examination on 9.2.1978 (Sl.No.4 of papers submitted by the plaintiffs). As the service book shows, the plaintiffs had been put to work as officiating Trains Clerk/Coding Clerk through a specific order. It is difficult to believe that the list of persons asked to appear in the viva voce test on 17.2.1978 will be a forged document. A similar order was issued on 4.12.1982. The only difference is in the reference. The letter of 9.2.1978 has reference No.E/Rect/TNC/MGS while the letter of 4.12.1982 has reference no.E/Stha/Gari Lipik/Chaturth Varg/Padonati/Mogal/82. The first letter is in regard to recruitment and the second in respect of promotion against 33 1/3% quota. ^{3/} The reference is in regard to formation of panel for the post of Train Clerk. ^{3/}

7. Also one thing is clear that the plaintiffs have been allowed to continue to work as Coding Clerks for a long time and had never been reverted it cannot be said that their officiation is a mere stop gap measure. It also runs counter to the directions of the Railway Board on this subject (paper no.9 of the documents Railway Board's letter of 23.2.1974). We have also not been advised of any extraneous circumstances which compelled the defendants to continue the plaintiffs for such a long time.

8. The learned counsel for the plaintiffs has relied on a judgment of this Bench in Registration No.61 of 1986 (T), Union of India v. Bhoonu Ram, delivered on 14.8.1986. In this case an employee was promoted to officiate as Trains Clerk and was awarded five increments during the course of his officiation, so his continuous officiating service against an existing permanent vacancy was nearly $6\frac{1}{2}$ years. He had appeared in the written test for selection against promotional quota but he had failed in the test. He was also admittedly promoted on adhoc basis on departmental quota. Though he failed in the departmental test he was retained in ~~the officiating post~~ ^{as meant} ~~services~~ and was not reverted on grounds that he failed in the test. All these ~~had meant~~ ^{as meant} that his work was upto the mark and his passing of the departmental test was considered only as a mere formality. It was held in this case that under the circumstances it was immaterial that the plaintiff failed to pass the departmental test and, therefore, we did not find any justification to interfere with the order of the learned Munsif. The facts in this case are more or less similar and we see no reason to take a different view of the matter.

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9. The plaintiffs have been working as Coding Clerks for a long time. They were continuing on 1.1.1985. ~~It was not a mere suitability test.~~ They had appeared in the written test and qualified. The final results are not known. They are still working on adhoc measure. They have by virtue of their long working, without any complaints, gained a right for regularization on the posts. They were peons in the D.O.S.(T)'s office. ~~If post the written test~~ ^{for} ~~through~~ which they passed was not in the promotional avenue. They can

be considered against the Direct Recruitment vacancies to which any person could apply. Their prayer for continuance on these posts deserves to be granted.

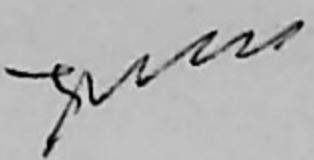
10. Confirmation of an employee is done after he has been regularised in service. The plaintiffs are still working in a stop gap arrangement, though by virtue of having worked for such a long period they have generated a right for themselves to be considered for absorption against these posts. Eligible employees should have been regularised or considered for confirmation immediately a permanent post becomes available as a result of retirement/death/resignation of a permanent Railway servant or due to the conversion of a temporary post into a permanent one. An employee can be confirmed only if a permanent post is available, his appointment is regular, i.e. after qualifying the selection/suitability, etc. and he is otherwise due for confirmation. It cannot be claimed on the plea that since he has worked for two years in an adhoc capacity an employee should be confirmed against a permanent vacancy. It is essential that he is first regularised. The two years rule applied to a regularly promoted employee officiating for more than two years but there also a clear vacancy has to exists and he has to be fit for confirmation. The plaintiffs, officiating only on adhoc basis, have, therefore, no right for confirmation and their prayer in this regard is liable to be rejected.

11. In the result the suit is disposed of in accordance with our above observations. The plaintiffs

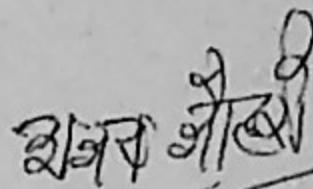
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should be considered for regular absorptions as Trains Clerk/Coding Clerk. They should not be reverted from their officiating capacity and once they have been regularised they should also be considered for confirmation. The suit is disposed of accordingly. Parties will bear their own costs.



V.C.



A.M.

Dated; February 24/10, 1987.

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